

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1738V

UNPUBLISHED

MICHAEL GAUER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 11, 2022

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Laura Levenberg, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Mary Eileen Holmes, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On December 2, 2020, Michael Gauer filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered a left shoulder injury related to vaccine administration (“SIRVA”) caused by an influenza vaccination he received on August 31, 2019. Petition at 1. Petitioner further alleges that his shoulder injury has persisted longer than six months and that he has not received any compensation (award or settlement) for his injury. Petition at ¶¶7-9. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 11, 2022, Respondent filed his Rule 4(c) Report and Proffer on Damages (“Rule 4/Proffer”) in which he concedes that Petitioner is entitled to compensation in this

¹ Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

case. Rule 4(c)/Proffer at 6. Specifically, Respondent states that "Petitioner had no apparent history of pain, inflammation or dysfunction of the affected shoulder prior to intramuscular vaccine administration that would explain the alleged signs, symptoms, examination findings and/or diagnostic studies occurring after vaccine injection; he more likely than not suffered the onset of pain within forty-eight hours of vaccine administration; his pain and reduced range of motion were limited to the shoulder in which the intramuscular vaccine was administered; and there is no other condition or abnormality present that would explain Petitioner's symptoms." *Id.* at 5-6.

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master